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MISCELLANY.

Bar Examination.

The following questions were asked by Virginia Board of Law Examiners, Roanoke, Va., June 27 and 28, 1916:

Virginia Board of Law Examiners.
Roanoke, Va., June 27-28, 1916.

FIRST DAY—SECTION ONE.

1. A passenger on a railway train is injured through the negligence of the conductor. After concluding his run, the conductor writes a letter to the passenger admitting his negligence, and expressing his sympathy. An action for damages is brought by the passenger against the railway company. At the trial of the case the conductor is dead, and counsel for plaintiff offers the letter in evidence, to which counsel for the railway company objects. What should be the ruling of the court?

2. The Warren Realty Company executes and delivers to John Adams a deed conveying a certain parcel of land in consideration of the sum of one thousand dollars, the deed reciting that all of the purchase money has been paid in full "the receipt of which is hereby acknowledged." As a matter of fact, Adams did not pay all of the purchase money in cash, and was indebted to the company for the unpaid balance of the purchase money, the company offers evidence to prove the balance due, to which the defendant objects. What should be the ruling of the court?

3. John Smith verbally agrees to rent a farm from Wm. Brown for a period of two years, agreeing to pay a lump sum of \$400 at the end of the two years. A few days later Brown informs Smith that he will not rent the farm, he having been advised that the verbal contract was unenforceable because of the statute of frauds. Smith sues Brown in an action of assumpsit, and the latter files a plea of the general issue. Can the defense of the statute of frauds be proved under the general issue?

4. A person, not a party to an action at law, is in the possession of a certain paper that you desire to introduce in evidence. He refuses to deliver this paper to you or to let you see it. Under our statute what steps would you take to compel its production?

5. John Smith is indicted for seduction. At the trial the Commonwealth proves that there was a promise of marriage, and further proves that the sexual intercourse was by virtue of such promise. The evidence, however, is wholly silent as to the previous chastity of the female. The jury brings in a verdict of "Guilty." Smith's counsel moves to set aside the verdict as contrary to the law and

the evidence, on the ground that the Commonwealth failed to prove the previous chastity of the female. What should be the ruling of the court?

6. You are plaintiff's counsel in a damage suit against the Southern Railway Co. for personal injuries. The company files its plea of the general issue, but you are desirous of being better informed of the exact nature of the company's defense. What steps, if any, could you take?

7. Counsel for the defendant in the foregoing question demurs to the evidence. He offered an instruction setting forth what he deemed to be the law relative to the measure of damages. The court overruled the demurrer, refused the instruction, and the jury rendered a verdict for \$1,000. What steps should be taken to bring these rulings before the Supreme Court of Appeals [What steps, why]?

8. On January 1, 1910, A executes and delivers to B his promissory note for \$500, payable on demand. On January 1, 1913, A pays to B the sum of \$300 on this note. He dies February 1, 1916, leaving the balance unpaid. His administrator seeks your advice as to whether or not he should pay the residue. What would you advise?

9. Chas. Jones obtains a judgment against The Front Royal & Riverton Improvement Company on January 1, 1910, but fails to docket the same; Wm. Brown obtains a judgment against the same company on February 1, 1910, and duly docket the same on that day. On June 1, 1910, the company conveys all of its real estate to the Warren Realty Co. What are the rights of the parties as between Jones, Brown and the Warren Realty Company?

10. Define a supersedeas as used in Virginia [as distinguished from a writ of error]?

11. The plaintiff institutes an action of assumpsit on a contract for the payment of money; he obtains personal service of process on the defendant, and files with his declaration an affidavit made by himself that to the best of his belief he is entitled to recover the sum of \$300; that such amount is justly due; and that he claims interest thereon from January 1, 1915. The defendant denies all liability and employs you to represent him. What steps would you take to protect your client's interest [to prevent judgment by defaults]?

12. State two rules of pleading which tend to produce singleness or unity in the issue?

13. When may the defense of the statute of limitations be raised under a plea of the general issue?

14. A makes an assault upon B in the public highway in the presence of C. The latter says nothing and does nothing either by way of encouraging the assault or stopping it. Is C guilty of any offense?

15. What constitutes the crime of champerty in Virginia?

16. State two of the canons of ethics as adopted by the Virginia State Bar Association?

FIRST DAY—SECTION TWO.

1. James Parker, as agent for Swift & Company, purchases from Robert Leach a lot of fat cattle, which are to be paid for ten days after delivery to Swift & Company. Leach knows that Parker is agent for Swift & Company, but he decides to take Parker's individual note, payable ten days after date for the purchase money. It later develops that Parker is insolvent and Leach confers with you as to his right to sue Swift & Company. What would you advise?

2. In the absence of express authority, in what circumstances will an agent have the power to make or endorse negotiable instruments so as to bind his principal?

3. When is an infant's contract (a) valid, (b) void, (c) voidable?

4. Does a moral obligation furnish a sufficient consideration to support a promise?

5. The American Agriculture Chemical Company agrees to furnish to Messrs. Kennedy and Crawford and the latter agree to purchase 400 tons of fertilizer to be delivered during the year 1916 at such periods as Kennedy & Crawford might designate, for which they were to pay \$20.00 per ton, delivered at Staunton, Virginia. The American Agricultural Chemical Company, however, expressly reserves the right to cancel the contract at any time they see fit. After receiving 100 tons of fertilizer under this contract, Messrs. Kennedy & Crawford decide that they do not care to accept any more shipments and consult you as to their rights in the premises. What would you advise?

6. What is the measure of damages for an unqualified annulment without reasonable cause by the vendee in an executory contract for the sale of an article not manufactured at the time of the breach?

7. Chas. Moses is indebted to the Front Royal National Bank in the sum of \$500.00, as evidenced by the joint negotiable note of himself and wife. At the time of procuring the loan he likewise delivers to the bank, as collateral security a note of Wm. Brown, payable to Moses, for the sum of \$300.00, and payable six months after date. Three days later, Brown, not knowing that the note has been pledged to the bank, pays to Moses the sum of \$200.00 on his note. Later Moses and his wife both become insolvent and the bank institutes suit on Brown's note for \$300.00, which it held as collateral security. Brown claims the credit of \$200.00 above referred to. Will his claim be upheld [note not yet due when transferred and when payment made]?

8. The maker of a negotiable note stipulates on its face that in the event of default in the payment thereof he will pay 10% attorney's fees for collection. What is the present doctrine in Virginia as to this stipulation?

9. A guardian without leave of the court invests his ward's money in real estate and has the property deeded directly to the ward. What are the ward's rights on becoming of age?

10. Mrs. Brown obtains a decree of divorce a vinculo, which is wholly silent as to the rights of either consort in the property of the other, and likewise silent on the question of alimony. The year after the divorce is granted, Mr. Brown dies leaving a tract of land containing 1,000 acres. Has she any rights in the premises?

11. In what circumstances will a parent incur liability for alienating the affections of a married daughter in action brought by the husband?

12. Chas. Harris purchased from the Maryland Shoe Company \$500.00 worth of shoes on 30 days' time. The company delivers the shoes to the carrier at Baltimore and consigns them to Harris at Front Royal, Virginia, the company's contract being completed when the shoes were delivered to the carrier at Baltimore. Harris is utterly insolvent, and before the shoes arrive at Front Royal he sells them to Schuerer & Son for \$400.00 cash. When the goods arrive in Front Royal and before they have the custody of the railway company the shoe company discovers Harris' insolvency and attempts to exercise the right of stoppage in transitu, they having had no notice of the sale from Harris to Schuerer. Whose rights are superior?

13. Suppose in the above case at the time of the purchase, Harris executed and delivered to the shoe company his note for the \$500.00, payable 30 days after date; how would this affect the situation?

14. Allen & Company are brokers engaged in the selling of stocks in the city of Charlottesville. They sell to William Barnes 100 shares of the capital stock of the Albemarle Milling Co. They represent to him that the total liability of the milling company does not exceed \$12,000. Barnes relying upon this statement purchases the stock. It develops later that the company is indebted to the extent of \$100,000, as evidenced by a deed of trust of record in the clerk's office of Corporation Court of City of Charlottesville, the result being that the capital stock in the milling company was worth nothing at the time of the sale by Allen & Company. In an action for deceit brought by Barnes against Allen & Company, the latter deny liability upon the ground that the purchaser made no inquiry, etc. What is your opinion as to the soundness of this defense?

15. In an action for malicious prosecution the evidence clearly showed that the defendant was actuated by malice and the trial judge instructed the jury that they had the right to infer "the want of probable cause" if they believed from the evidence the defendant was actuated by malice. Is this instruction sound?

16. In an action for slander, who determines the question of "privilege" (2) and who determines the question of "malice?"

SECOND DAY—SECTION THREE.

1. A New York corporation, through its Virginia agent, lends to a citizen of Virginia the sum of \$1,000. The bond evidencing the

loan is executed in Virginia, and secured by a deed of trust on real estate in Virginia. The bond is payable to the New York corporation at its office in the city of New York. Under the Virginia law the loan was a valid one, but under the New York law it was void because of usury. What law governs and why [suit in Va.]?

2. Joseph Hout died on September 1, 1915, seized and possessed of a farm containing 350 acres. 300 acres of this land was situated in Clarke county, Virginia, while the remaining contiguous 50 acres was situated in Jefferson county, West Virginia. The heirs were very numerous, and the land not being susceptible of partition in kind, the Circuit Court of Clarke county directs you as special commissioner to make sale of the same. All of the parties are before the court, and you accordingly sell the land pursuant to the decree. What effect will be given your deed by the courts of West Virginia?

3. Assume for the purpose of this question that all the foregoing land is situated in Clarke county, Virginia. James Moore files his petition in the foregoing partition suit, claiming to be the owner in fee simple of the entire tract of land, basing his claim upon a deed which he obtained July 15, 1890. None of the parties in interest object to the filing of the petition and after numerous depositions the cause by consent of parties is fixed for hearing upon the merits before the judge in vacation, who enters a decree dismissing the petition for want of jurisdiction. Discuss whether or not such a decree is erroneous, giving your reasons?

4. In what circumstances will a court of equity entertain a bill to quiet the title to real estate by removing the clouds therefrom?

5. What is the general rule as to the liability of a trustee for the acts of his co-trustee in the administration of a trust?

6. What is the doctrine as to a court of equity decreeing the specific performance of contracts concerning chattels?

7. Wm. Jones is the owner of a certain farm, upon 30 acres of land there is growing a crop of wheat and upon another 30 acres there is growing a crop of clover. He dies in May, 1916, before either the wheat or clover is cut. You are appointed as his administrator. His son is his only heir at law and he claims that the clover and wheat descend with the land to him as distinguished from going into your hands as administrator. What is your opinion on this subject?

8. What is the liability of a tenant to his co-tenant for waste, both at common law and in Virginia?

9. Chas. Warner is the owner of 1,000 acres of river bottom land. On January 1, 1915, he conveys to Wm. Jones 200 acres of this land, in which conveyance his wife refuses to unite, all of the land is of the same character and of equal value. He died in January, 1916, and his widow claims the right to have her dower assigned her in both the land sold and in the land of which Warner died seized and possessed. What is the rule in equity on this subject?

10. A party claims title to a tract of land by adverse possession. Distinguish such a claim based upon "color of title" and one where there is no color of title.

11. Chas. Willis, an old bachelor, died intestate. He left no brothers or sisters, but his heirs at law consist of (1) three sons of his deceased brother, (2) one daughter of his deceased brother William, (3) and six sons of his deceased brother Tom. How will the estate be divided?

12. Jas. Brown and Chas. Lewis are partners in the mercantile business under the firm name of Brown & Lewis. On June 1, 1916. Wm. Harris is taken into the firm as a partner. What is his liability for the debts of the firm Brown & Lewis, existing prior to his entering the firm?

13. Thomas Jackson is indebted to the above firm of Brown, Lewis & Harris and in the partnership name they obtain judgment against him for the sum of \$200.00. The judgment is rendered in favor of Brown, Lewis & Harris and is docketed accordingly. Discuss its validity.

14. Discuss the competency of the following persons as witnesses to a will (a) legatees and devisees (b) husband or wife of a legatee or devisee (c) executor.

15. Who is an executor de son tort?

16. What is the effect both at common law and in Virginia of a creditor appointing his debtor his executor?

SECOND DAY—SECTION FOUR.

1. You hire a horse from a liveryman. What degree of care is owing by you with reference to the treatment of the animal?

2. What is the difference, if any, as to the common law liability of an inn-keeper and a sleeping car company with reference to the loss of baggage by a guest or passenger?

3. Discuss briefly the duty, if any, that a carrier of passengers owes to a passenger with reference to assisting the passenger to alight from the car or vehicle?

4. Messrs. Copp & Arty are shippers of live stock and they deliver to the Southern Railway Co. at Edinburg, Va., a load of cattle consigned to themselves at Baltimore, Md. They verbally instruct the agent to route the cattle via B. & O. Railway Co. The agent, however, routes them differently, and sets forth the latter routing in the bill of lading, which is duly signed by all parties. There was a delay in the arrival of the cattle, which would not have occurred had the cattle been routed as the agent was verbally instructed. Discuss briefly the liability of the company?

5. Amon Johnson, an engineer, is killed as the result of his failure to observe a reasonable rule of the railway company which had been promulgated for his safety. At the trial of the case, his administrator contends that this rule had been frequently and habitu-

ally violated to such an extent as to constitute a waiver on the part of the company. What elements are necessary to be proved before the company will be deemed to have waived the observance of the rule?

6. Discuss briefly the constitutionality of the following ordinance passed by the council of the city of Richmond:

"It shall be unlawful for any colored person to occupy as a residence any house upon any street or alley between two adjacent streets on which a greater number of houses are occupied as residences by white people than are occupied as residences by colored people."

7. If the court entertains a reasonable doubt as to the constitutionality of an act of the Legislature, what will be its decision?

8. In what circumstances and within what period can you appeal from a decision of the State Corporation Commission?

9. State generally what powers may be exercised by a municipal corporation?

10. The Riverton Lime Company and the Norfolk & Western Railway Company are joint defendants in an action at law, brought in the Circuit Court of Warren county. Two days before the return day of the writ, a copy is served in Warren county on W. E. Carson, President of the Riverton Lime Company, he being a resident of that county; on the same date a copy is likewise served on the station agent of the Norfolk & Western Railway at Riverton, Warren county. What is your opinion as to the legality of these services?

11. What is the general rule as to the authority of an officer of a corporation?

12. What authority has an ordinary private business corporation to borrow money and execute a negotiable note therefor?

13. What right has a director of a corporation to contract with his company?

14. State briefly what facts should be set forth in a certificate for the incorporation of a private corporation in Virginia?

15. What is the common law doctrine in Virginia as to recovery on a life insurance policy where the assured, while sane, committed suicide?

16. In the absence of any relation of debtor and creditor can a son-in-law carry an insurance policy on the life of his father-in-law?